

Presto & Barbire

Counsellors at Law

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MAY 26 1983

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Rutherford, New Jersey 07070

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Dominick N. Presto

Paul S. Barbire

EXECUTIVE DEPT.

May 25, 1983

Honorable Reginald Stanton
Superior Court of New Jersey
228 Hall of Records
Newark, N.J. 07102

Re: State of New Jersey, Department of Environmental
Protection vs. Scientific Chemical Processing, Inc.,
et al
Docket Number: L-1852-83E

Dear Judge Stanton:

Enclosed please find the following documents which I submit in response to the application of the State of New Jersey, Department of Environmental Protection:

- (i) Affidavit of Dominick Presto.
- (ii) Affidavit of Carl Ling.

The thrust of the contention of the defendants, Sigmond & Presto, a partnership and Dominick Presto, individually, is that this matter should not proceed in a summary manner but rather should be heard as a normal litigated matter so that these defendants may have an opportunity to bring in other necessary parties in particular generators who can be easily identified once the records of the companies involved are obtained from the United States Attorney's Office. Additionally, time is also required in order to explore the validity of the various Affidavits filed by the plaintiffs.

Plaintiffs indicate that they would attempt to use the record before the Administrative Law Judge as proof of the happenings alleged in the present complaint. It is respectfully submitted that notwithstanding other legal problems which may exist with respect thereto, many of the defendants were not party to that hearing and it is my understanding that none of them presented testimony thereat.

It is respectfully requested that the Order to Show Cause for Interim Relief be denied and that the matter be set down for trial.

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Honorable Reginald Stanton

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May 25, 1983

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I am by copy of this letter serving the other interested parties in
this matter.

Very truly yours,

PRESTO & BARBIRE

By


Paul S. Barbire

PSB/am

cc: David W. Reger, DAG
Edward J. Egan, Esq. ✓

PRESTO & BARBIRE

18 GLEN ROAD

RUTHERFORD, NEW JERSEY 07070

(201) 939-4868

ATTORNEYS FOR Sigmond & Presto and Dominick
Presto, individually

Plaintiff

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL
PROTECTION

vs.

Defendant

SCIENTIFIC CHEMICAL PROCESSING, INC., a corpora-
tion; ENERGALL, INC., a corporation; PRESTO INC.,
a corporation; INMAR ASSOCIATES, INC., a corpora-
tion; LEIF R. SIGMOND and DOMINICK PRESTO, a
partnership, t/a SIGMOND AND PRESTO; LEIF R. SIGMOND,
an individual; HERBERT G. CASE, an individual;
MACK BARNES, an individual; DOMINICK PRESTO, an
individual, MARVIN MAHAN, an individual

STATE OF NEW JERSEY)

) SS.

COUNTY OF BERGEN)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
ESSEX COUNTY

Docket No. C-18 52-83E

CIVIL ACTION

AFFIDAVIT
of
CARL LING

Carl Ling, being duly sworn according to law, upon his oath deposes and
says:

1. I am a graduate of St. John's University with a B.S. in Chemistry.
I have 27 years experience in the chemical industry with 13 years specifically
related to solvents recovery. I was the president and operator of Presto, Inc.

during the time it was in operation and at the time I gave testimony before the Administrative Law Judge.

2. I am familiar with the operation of the three companies named in this suit and the functions performed by the various employees, officers and directors of same.

3. My attention has been drawn to a certain statement contained in Exhibit A attached to the complaint, the initial determination made by Lewis P. Goldshore, A.L.J., wherein I was found to have said that "he was responsible to Leif Sigmond and Dominick Presto who are the owners of Presto, Inc." These words are out of context. In fact, I never intended to imply that Dominick Presto at any time controlled or contributed to the day to day affairs and/or operations of the chemical businesses which are the subject matter of this litigation. In fact, Mr. Presto's sole involvement was in his capacity as a legal advisor to the business. He was never involved in making any decisions as to the operations of the chemical businesses themselves and certainly not in the day to day operations. I never consulted Dominick Presto on any operational problem during the time that I was involved in any of the businesses.

4. The State of New Jersey, in its brief at page 16 asserts that Dominick Presto together with Sigmond, Case and Barnes had significant management control over the operations of the chemical businesses. This assertion is based upon the findings in the Law Judge's report at pages 14 and 21 of Exhibit E. In fact, a review of those pages in no way implicates Mr. Presto as having significant management control over the subject corporations.

5. It is my belief that all office personell and other employees of the companies involved would be of the same opinion as expressed by me.

I BELIEVE
6. / The materials contained in the drums at Carlstadt and Newark are, in the main, resins and still bottoms. These materials are very thick and tend to lie on the surface of the soil if spilled and do not penetrate the soil like a liquid substance and *IN MY OPINION* do not therefore present an immediate danger.

7. The materials stored in the building are of such a type that they would be technically considered not flammable. Not knowing the type of test given to the materials by the Newark Fire Department, I cannot comment upon their findings. The drums that the materials are in are not to be relied upon for identification because most of the drums are re-used and carry labels that are not descriptions of the contents. Presto, Inc., dealt in chlorinated solvents which are not flammable. The acids and resins which are also in the building are not flammable.

I certify that the foregoing statements made by me are true based upon my best information and belief. I am aware that if any of the aforesaid statements made by me are intentionally false, that I am subject to punishment.


CARL LING

PRESTO & BARBIRE

18 GLEN ROAD

RUTHERFORD, NEW JERSEY 07070

(201) 939-4868

ATTORNEYS FOR Sigmond & Presto and Dominick
Presto, individually

Plaintiff

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL
PROTECTION

vs.

Defendant

SCIENTIFIC CHEMICAL PROCESSING, INC., a corpora-
tion; ENERCALL, INC., a corporation; PRESTO INC.,
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partnership, t/a SIGMOND AND PRESTO; LEIF R.
SIGMOND, an individual; HERBERT G. CASE, an
individual; MACK BARNES, an individual; DOMINICK
PRESTO, an individual, MARVIN MAHAN, an individual

STATE OF NEW JERSEY)

) SS.

COUNTY OF BERGEN)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
ESSEX COUNTY

Docket No. C-18 52-83E

CIVIL ACTION

AFFIDAVIT

of

DOMINICK PRESTO

DOMINICK PRESTO, being duly sworn according to law, upon his oath de-
poses and says:

1. I am one of the defendants named in the Order to Show Cause and
the Verified Complaint in this matter as one of the partners in Sigmond and
Presto owners of 441 Wilson Avenue, Newark, New Jersey.

2. I was served with voluminous papers consisting of an Order to Show Cause, Verified Complaint and supporting affidavits and documents on May 11, 1983.

3. In addition, I received in the mail on May 23, 1983 a brief consisting of 38 papers together with supporting exhibit. The Order to Show Cause is returnable on Friday, May 27, 1983. Based upon my knowledge and involvement in this litigation, I am at an extreme disadvantage in having to defend myself in a Summary Proceeding such as this. In the accompanying affidavit of Carl Ling it is clear that my knowledge of the specific factual allegations alleged in the plaintiffs moving papers is scant and in most cases non-existent.

4. I am now attempting to contact all other parties who may have information concerning the matters alleged in the plaintiffs paper and I would require an opportunity to discover all relevant information. In addition, I have notified my insurance company of the claims made by the State of New Jersey and I would respectfully request that these insurance companies have an opportunity to determine whether my defense in this matter would be covered under the aforesaid policies. In addition, discovery may reveal other sundry parties who may be responsible in some capacity for the remedies sought by the plaintiff. I would request an opportunity to pursue ^{that} avenue as part of my approach to this litigation.

5. I presume the State of New Jersey would argue that delay is not warranted in this matter for the reason that the subject sites create an imminent peril. If such was the case, I can not conceive why the State of New

Jersey has waited almost 3 years to bring to the attention of the owners the problems existent at the sites. Parenthetically there had been negotiations with Olsen-Hassold and presently with S & W Waste of Kearny to effect a sale of the Newark property and a clean up by them. The Department of Environmental Protection never included the land owners in the Olsen-Hassold negotiations. It is my opinion that the best interests of all concerned, including the defendants, would be best served if this litigation were to proceed in a normal fashion as approved to be expedited summary hearing. I believe that in only such a setting that complete justice could be done to all concerned in these matters.

6. I intend to file a responsive pleading which I will seek affirmative relief from named parties as well as yet to be named parties.

7. I have not been involved in any of the day to day operations or decisions relative to the type of work handled or the like. I acted as attorney to the various corporations and was consulted with respect to contracts and other legal matters.

8. From recent conversations with Carl Ling, I am advised that with the exception of certain drums of acid and approximately 388 drums of resin on the second floor and some miscellaneous drums on the first floor which are owned by Scientific Chemical Processing all other drums and tankage in the building are the property of Presto, Inc., which was operated by Carl Ling as the president and secretary the sole officer and director of that company since it commenced business. During the time that I was an officer and director the corporation did no business.

9. I had resigned as an officer and director of Scientific Chemical Processing on May 19th, 1980, and since said time have not had any dealings with respect to the locations in question except as a part owner of 411 Wilson Avenue, Newark, New Jersey. At all times I have tried to do something to bring about the clean up. I have concentrated my efforts on the sale of the Newark property but same was delayed for the better part of 1 (one) year due to negotiations between the purchasers and the D.E.P. and that sale appears to have fallen through. As previously stated a fully licensed waste handler, S & W Waste is very much interested in the location to conduct its business. The plaintiff alleges that a Consent Order was worked out with the previous potential purchases and it would appear to be a relatively simple matter to work matters out with this potential purchases.

I certify that the foregoing statements made by me are true based upon my best information and belief.

I am aware that if any of the foregoing statements are intentionally false that I am subject to punishment.

DATED: May 24, 1983




DOMINICK PRESTO

TO THE BOARD OF DIRECTORS of
SCIENTIFIC CHEMICAL PROCESSING, INC.

I hereby tender my resignation as an Officer
and Director of SCIENTIFIC CHEMICAL PROCESSING, INC.
effective immediately.

DATED: May 19, 1980.



DOMINICK PRESTO